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7 Attorneys for Defendant  
8 VARIAN MEDICAL SYSTEMS, INC.

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

12 UNIVERSITY OF PITTSBURGH OF THE  
13 COMMONWEALTH SYSTEM OF HIGHER  
14 EDUCATION d/b/a UNIVERSITY OF  
15 PITTSBURGH, a Pennsylvania non-profit  
corporation (educational),

Plaintiff,

v.

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VARIAN MEDICAL SYSTEMS, INC., a  
Delaware corporation,

Defendant.

Case No. CV 08-02973 MMC

**SEALED DECLARATION OF  
MATTHEW H. POPPE IN SUPPORT  
OF VARIAN'S MOTION TO  
TRANSFER ACTION TO U.S.  
DISTRICT COURT FOR WESTERN  
DISTRICT OF PENNSYLVANIA**

Date: August 1, 2008  
Time: 9:00 a.m.  
Courtroom: 7, 19th Floor

**DOCUMENT SUBMITTED UNDER SEAL PURSUANT TO CIVIL L.R. 79-5(d)**

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CONTAINS MATERIAL DESIGNATED "CONFIDENTIAL" AND "CONFIDENTIAL –  
ATTORNEY EYES ONLY" PURSUANT TO PROTECTIVE ORDER ENTERED IN  
*UNIVERSITY OF PITTSBURGH V. VARIAN MEDICAL SYSTEMS, INC., CASE NO. 2:07-*  
*CV-00491-AJS IN THE U.S.D.C. WESTERN DISTRICT OF PENNSYLVANIA*

1 I, Matthew H. Poppe, declare:

2 1. I am a partner in the law firm of Orrick, Herrington & Sutcliffe LLP (“Orrick”),  
3 counsel of record for defendant Varian Medical Systems, Inc. (“Varian”) in this action and in  
4 *University of Pittsburgh v. Varian Medical Systems, Inc.*, Case No. 2:07-cv-00491-AJS, in the  
5 Western District of Pennsylvania (the “Penn. Case”). I am licensed to practice law in the State of  
6 California. I have personal knowledge of the facts stated herein, except where otherwise stated,  
7 and I could and would testify to those facts if called as a witness.

8 2. Attached hereto as Exhibit A is a true and correct copy of excerpts from the  
9 deposition of Karun Shimoga, taken on August 31, 2007 in the Penn. Case.

10 3. Attached hereto as Exhibit B is a true and correct copy of excerpts from the  
11 deposition of Joel Greenberger, taken on September 21, 2007 in the Penn. Case.

12 4. Attached hereto as Exhibit C is a true and correct copy of excerpts from the  
13 deposition of Andre Kalend, taken on October 5, 2007 in the Penn. Case.

14 5. Attached hereto as Exhibit D is a true and correct copy of excerpts from the  
15 deposition of Takeo Kanade, taken on September 19, 2007 in the Penn. Case.

16 6. Attached hereto as Exhibit E is a true and correct copy of excerpts from the  
17 deposition of Robert Wooldridge, taken on September 26, 2007 in the Penn. Case.

18 7. Attached hereto as Exhibit F is a true and correct copy of excerpts from the  
19 deposition of Richard Westerhoff, taken on October 3, 2007 in the Penn. Case.

20 8. Attached hereto as Exhibit G is a true and correct copy of excerpts from the  
21 deposition of Marc Malandro, taken on October 2, 2007 in the Penn. Case.

22 9. Attached hereto as Exhibit H is a true and correct copy of a document produced in  
23 the Penn. Case by Carnegie Mellon University (“CMU”) pursuant to subpoena with Bates Nos.  
24 CMU 0279 to CMU 0283 and marked as Exhibit 7 at Mr. Wooldridge’s deposition on September  
25 26, 2007. The same document (though with different Bates numbers) was marked as Exhibit 1 at  
26 Mr. Malandro’s deposition on October 2, 2007.

27 10. Attached hereto as Exhibit I is a true and correct copy of a document produced in  
28 the Penn. Case by CMU pursuant to subpoena with Bates Nos. CMU 0274 to CMU 0278 and

1 marked as Exhibit 9 at Mr. Wooldridge's deposition on September 26, 2007. The same document  
2 was marked as Exhibit 10 at Mr. Malandro's deposition on October 2, 2007.

3       11. Attached hereto as Exhibit J is a true and correct copy of a document produced in  
4 the Penn. Case by CMU pursuant to subpoena with Bates Nos. CMU 0227 to CMU 0236 and  
5 marked as Exhibit 24 at Mr. Wooldridge's deposition on September 26, 2007.

6       12. Attached hereto as Exhibit K is a true and correct copy of a document produced in  
7 the Penn. Case by CMU pursuant to subpoena with Bates No. CMU 0237 and marked as Exhibit  
8 25 at Mr. Wooldridge's deposition on September 26, 2007.

9       13. Attached hereto as Exhibit L is a true and correct copy of a document produced in  
10 the Penn. Case by CMU pursuant to subpoena with Bates Nos. CMU 0238 to CMU 0248 and  
11 marked as Exhibit 26 at Mr. Wooldridge's deposition on September 26, 2007.

12       14. Attached hereto as Exhibit M is a true and correct copy of a document produced in  
13 the Penn. Case by CMU pursuant to subpoena with Bates Nos. CMU 0256 to CMU 0257 and  
14 marked as Exhibit 29 at Mr. Wooldridge's deposition on September 26, 2007.

15       15. Attached hereto as Exhibit N is a true and correct copy of a document produced in  
16 the Penn. Case by CMU pursuant to subpoena with Bates No. CMU 0258 and marked as Exhibit  
17 30 at Mr. Wooldridge's deposition on September 26, 2007.

18       16. Attached hereto as Exhibit O is a true and correct copy of a document produced in  
19 the Penn. Case by CMU pursuant to subpoena with Bates No. CMU 0259 and marked as Exhibit  
20 31 at Mr. Wooldridge's deposition on September 26, 2007.

21       17. Attached hereto as Exhibit P is a true and correct copy of a document produced in  
22 the Penn. Case by CMU pursuant to subpoena with Bates No. CMU 0260 and marked as Exhibit  
23 32 at Mr. Wooldridge's deposition on September 26, 2007.

24       18. Attached hereto as Exhibit Q is a true and correct copy of a document produced in  
25 the Penn. Case by CMU pursuant to subpoena with Bates No. CMU 0262 and marked as Exhibit  
26 34 at Mr. Wooldridge's deposition on September 26, 2007.

27       19. Attached hereto as Exhibit R is a true and correct copy of excerpts from the  
28 deposition of Alexander Ducruet, taken on October 2, 2007 in the Penn. Case.

20. Attached hereto as Exhibit S are true and correct copies of documents produced in the Penn. Case by UPitt with Bates numbers PITT00001625-72, 2018-23.

21. Attached hereto as Exhibit T is a true and correct copy of excerpts from the deposition of Joel Greenberger, taken on October 24, 2007 in the Penn. Case.

22. Attached hereto as Exhibit U is a true and correct copy of excerpts from the deposition of Alexander Ciocca, taken on October 3, 2007 in the Penn. Case.

23. Attached hereto as Exhibit V is a true and correct copy of excerpts from the deposition of Jeffrey Shogan, taken on October 3, 2007 in the Penn. Case.

24. Attached hereto as Exhibit W is a true and correct copy of excerpts from the deposition of Charalambos Athanassiou, taken on November 16, 2007 in the Penn, Case.

25. Attached hereto as Exhibit X is a true and correct copy of a document marked as Exhibit 1 at the deposition of Alexander Ciocca, taken on October 3, 2007 in the Penn Case.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed in Menlo Park, California on June 27, 2008.

/s/ Matthew H. Poppe

Matthew H. Poppe

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the SEALED DECLARATION OF  
MATTHEW H. POPPE IN SUPPORT OF VARIAN'S MOTION TO TRANSFER ACTION TO  
U.S. DISTRICT COURT FOR WESTERN DISTRICT OF PENNSYLVANIA was served upon  
the University of Pittsburgh, through its counsel, via:

X   Hand-Delivery

                   Facsimile

                   First Class, US Mail, Postage Prepaid

                   Certified Mail-Return Receipt Requested

                   ECF Electronic Service

                   Overnight Delivery

at the following addresses:

Rita E. Tautkus  
Morgan Lewis & Bockius, LLP  
One Market – Spear Street Tower  
San Francisco, CA 94105  
[rtautkus@morganlewis.com](mailto:rtautkus@morganlewis.com)

Dated: June 27, 2008

/s/ Matthew H. Poppe  
Matthew H. Poppe

1 WILLIAM L. ANTHONY, JR. (State Bar No. 166026)  
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2 MATTHEW H. POPPE (State Bar No. 177854)  
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8 VARIAN MEDICAL SYSTEMS, INC.

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNIVERSITY OF PITTSBURGH OF THE  
COMMONWEALTH SYSTEM OF HIGHER  
EDUCATION d/b/a UNIVERSITY OF  
PITTSBURGH, a Pennsylvania non-profit  
corporation (educational),

Plaintiff,

v.

VARIAN MEDICAL SYSTEMS, INC., a  
Delaware corporation,

Defendant.

Case No. CV 08-02973 MMC

**MANUAL FILING NOTIFICATION**

**SEALED EXHIBITS A THROUGH X  
IN SUPPORT OF SEALED  
DECLARATION OF MATTHEW H.  
POPPE IN SUPPORT OF VARIAN'S  
MOTION TO TRANSFER ACTION  
TO U.S. DISTRICT COURT FOR  
WESTERN DISTRICT OF  
PENNSYLVANIA**

Date: August 1, 2008  
Time: 9:00 a.m.  
Courtroom: 7, 19th Floor  
Judge: Honorable Maxine M. Chesney

## **MANUAL FILING NOTIFICATION**

Regarding:

**(1) Sealed Exhibits A through X in Support of Sealed Declaration Of  
Matthew H. Poppe In Support Of Varian's Motion To Transfer Action To U.S. District  
Court For Western District Of Pennsylvania**

(2) This filing is in paper or physical form only, and is being maintained in the case file in the Clerk's office.

If you are a participant in this case, this filing will be served in hard-copy shortly.

For information on retrieving this filing directly from the court, please see the court's main web site at <http://www.cand.uscourts.gov> under Frequently Asked Questions (FAQ).

This filing was not efiled for the following reason(s):

Voluminous Document (PDF file size larger than the efilng system allows)

Unable to Scan Documents

Physical Object (description): \_\_\_\_\_

Non-Graphic/Text Computer File

Confidential - Item Under Seal.

[ ] Conformance with the Judicial Co

Other (description): \_\_\_\_\_

Dated: June 27, 2008

WILLIAM L. ANTHONY  
MATTHEW H. POPPE  
ZHENG LIU  
ORRICK, HERRINGTON & SUTCLIFFE LLP

By: /s/ *Matthew H. Poppe* /s/

Matthew H. Poppe  
Attorneys for Defendant  
VARIAN MEDICAL SYSTEMS, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of **Manual Filing Notification: Sealed Exhibits A Through X In Support Of Sealed Declaration Of Matthew H. Poppe In Support Of Varian's Motion To Transfer Action To U.S. District Court For Western District Of Pennsylvania** was served upon the University of Pittsburgh, through its counsel, via:

\_\_\_\_\_ Hand-Delivery

\_\_\_\_\_ Facsimile

\_\_\_\_\_ First Class, US Mail, Postage Prepaid

\_\_\_\_\_ Certified Mail-Return Receipt Requested

X ECF Electronic Service

\_\_\_\_\_ Overnight Delivery

at the following addresses:

Rita E. Tautkus  
Morgan Lewis & Bockius, LLP  
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San Francisco, CA 94105  
[rtautkus@morganlewis.com](mailto:rtautkus@morganlewis.com)

Dated: July 2, 2008

/s/ Matthew H. Poppe  
Matthew H. Poppe